

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 423, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 10, delete "participant commits misconduct while in
- 2 active service" and insert "**participant:**
- 3 **(1) is charged with a criminal offense that is:**
- 4 **(A) a felony related to the participant's service as a public**
- 5 **officer or public employee; or**
- 6 **(B) a misdemeanor involving an act that has resulted in a**
- 7 **financial loss to the state or in an unlawful benefit to an**
- 8 **individual in the conduct of state business; or**
- 9 **(2) is the subject of an inspector general's report certified to:**
- 10 **(A) the attorney general under IC 4-2-7-6; or**
- 11 **(B) a prosecuting attorney under IC 4-2-7-7;".**
- 12 Page 1, line 11, delete "on the force,".
- 13 Page 1, line 11, begin a new line blocked left beginning with "the
- 14 PERF board".
- 15 Page 1, line 11, delete "conduct a hearing" and insert "**take the**
- 16 **actions described in subsection (d).**
- 17 **(d) Whenever the PERF board receives the charges or a**
- 18 **certified report under subsection (c), the PERF board may begin**
- 19 **an investigation. If, after conducting an investigation, the PERF**
- 20 **board decides, by a majority vote, to conduct further proceedings".**

Page 1, line 13, delete "misconduct" and insert "**participant's conduct**".

Page 1, line 16, delete "appropriate." and insert "**appropriate; the PERF board shall schedule a public hearing on the matter not later than sixty (60) days after the criminal prosecution is completed. The PERF board shall notify the participant not later than five (5) days after the public hearing is scheduled.**

(e) If a public hearing is scheduled under subsection (d), the participant may examine and make copies of all evidence in the PERF board's possession relating to the possible forfeiture of all or a portion of the participant's annual retirement allowance.

(f) At a public hearing under subsection (d), the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the participant's expense, by counsel.

(2) The right to call and examine witnesses.

(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses."

Page 1, line 17, delete "(d)" and insert "**(g)**".

Page 2, line 2, delete "(c):" and insert "**(d):**".

Page 2, line 26, delete "(e) The" and insert "**(h) After the public hearing under subsection (d), the PERF board shall state its findings of fact. If the PERF board, based on clear and convincing evidence, finds by a majority vote that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate, the**".

Page 2, line 26, after "a" insert "**written**".

Page 2, line 26, after "determination" insert "**that includes the PERF board's findings of fact**".

Page 2, line 27, after "the" insert "**public**".

Page 2, line 27, delete "(c)" and insert "**(d)**".

Page 2, line 29, delete "(f)" and insert "**(i)**".

Page 2, line 29, delete "(c)" and insert "**(d)**".

Page 2, line 35, delete "(g)" and insert "**(j)**".

Page 2, line 35, delete "(c)" and insert "**(d)**".

Page 2, line 42, delete "(h)" and insert "**(k)**".

Page 3, line 1, delete "(g)" and insert "**(j)**".

Page 3, between lines 7 and 8, begin a new paragraph and insert:

"(l) A participant for whom the PERF board has determined under this section that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate may

request that the PERF board reconsider its determination by filing a written request with the PERF board not later than fifteen (15) days after the date the PERF board issues its determination. The written request must state concisely the reasons that the participant believes that the forfeiture is erroneous. After the PERF board receives the written request, the PERF board shall set the matter for a hearing. At the hearing, the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the participant's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The PERF board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The PERF board shall issue its ruling in writing and may:

- (1) affirm its determination that the forfeiture is appropriate;
- (2) modify its determination by reducing or increasing the amount of the forfeiture; or
- (3) vacate its determination that forfeiture is appropriate."

Page 3, line 8, delete "(i)" and insert "(m)".

Page 3, delete lines 18 through 25, begin a new paragraph and insert:

"(n) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the inspector general shall:

- (1) deliver a copy of the report to the PERF board; and
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.

(o) A participant for whom forfeiture of all of the participant's annual retirement allowance is determined appropriate is entitled to the return of the participant's contributions to the fund with interest. "

Page 3, delete lines 26 through 39, begin a new paragraph and insert:

"(p) The PERF board's evidence relating to an investigation under subsection (d) is confidential until the earlier of:

- (1) the time the participant is notified of the PERF board's public hearing under subsection (d); or
- (2) the time the participant elects to have the records made public."

Page 3, line 40, delete "IC 5-14-3-4(b)(21).", begin a new paragraph

1 and insert:

2 **"(q)".**

3 Page 3, delete line 42.

4 Delete pages 4 through 5.

5 Page 6, delete lines 1 through 8, begin a new paragraph and insert:

6 **"SECTION 2. IC 5-10.3-8-14 IS ADDED TO THE INDIANA**
 7 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 8 **[EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section does not apply**
 9 **to a member of the fund who is an employee of the following:**

10 **(1) The judicial department of state government.**

11 **(2) The legislative department of state government.**

12 **(b) This section does not apply to a member's annuity savings**
 13 **account (as described in IC 5-10.2-2-3).**

14 **(c) Notwithstanding any other provision of Indiana law, a**
 15 **member of the fund is required to render honorable service as a**
 16 **condition for receiving a retirement benefit under this article.**

17 **(d) If a member:**

18 **(1) is charged with a criminal offense that is:**

19 **(A) a felony related to the member's service as a public**
 20 **officer or public employee; or**

21 **(B) a misdemeanor involving an act that has resulted in a**
 22 **financial loss to the state or in an unlawful benefit to an**
 23 **individual in the conduct of state business; or**

24 **(2) is the subject of an inspector general's report certified to:**

25 **(A) the attorney general under IC 4-2-7-6; or**

26 **(B) a prosecuting attorney under IC 4-2-7-7;**

27 **the board shall take the actions described in subsection (e).**

28 **(e) Whenever the board receives the charges or a certified report**
 29 **under subsection (d), the board may begin an investigation. If, after**
 30 **conducting an investigation, the board decides, by a majority vote,**
 31 **to conduct further proceedings to determine whether:**

32 **(1) the member's conduct constitutes a breach of the condition**
 33 **that the member's service be honorable; and**

34 **(2) forfeiture of all or a portion of the member's retirement**
 35 **benefit is appropriate;**

36 **the board shall schedule a public hearing on the matter not later**
 37 **than sixty (60) days after the criminal prosecution is completed.**
 38 **The board shall notify the member not later than five (5) days after**
 39 **the public hearing is scheduled.**

40 **(f) If a public hearing is scheduled under subsection (e), the**
 41 **member may examine and make copies of all evidence in the**
 42 **board's possession relating to the possible forfeiture of all or a**

1 portion of the member's retirement benefit.

2 (g) At the public hearing under subsection (e), the member is
3 entitled to appropriate due process protection consistent with
4 IC 4-21.5, including the following:

- 5 (1) The right to be represented, at the member's expense, by
6 counsel.
- 7 (2) The right to call and examine witnesses.
- 8 (3) The right to introduce exhibits.
- 9 (4) The right to cross-examine opposing witnesses.

10 (h) The board shall consider and balance the following factors
11 against the goals of the public pension laws in making a
12 determination under subsection (e):

- 13 (1) The member's length of service.
- 14 (2) The reason for the member's retirement.
- 15 (3) The extent to which the member's benefit has vested.
- 16 (4) The member's duties.
- 17 (5) The member's history of public service, including the
18 public service covered by the fund and other public
19 employment or service completed by the member.
- 20 (6) The nature of the misconduct, including the following:
 - 21 (A) The seriousness of the misconduct.
 - 22 (B) Whether the misconduct was a single offense or
23 multiple offenses.
 - 24 (C) Whether the misconduct was an isolated, one (1) time
25 occurrence or a continuing event.
- 26 (7) The relationship between the misconduct and the
27 member's public service.
- 28 (8) The degree of the member's moral turpitude, guilt, or
29 culpability, including the member's motives for and personal
30 gain from the misconduct.
- 31 (9) The availability and adequacy of other punishment or
32 sanctions for the misconduct, including criminal prosecution.
- 33 (10) Other personal circumstances of the member that bear on
34 the justness of forfeiture.

35 (i) After the public hearing under subsection (e), the board shall
36 state its findings of fact. If the board, based on clear and convincing
37 evidence, finds by a majority vote that forfeiture of all or a portion
38 of the member's retirement benefit is appropriate, the board shall
39 issue a written determination that includes the board's findings of
40 fact not later than thirty (30) days after the hearing under
41 subsection (e) and provide a copy to the member.

42 (j) If the board determines under subsection (e) that the

1 forfeiture of all or a portion of the member's retirement benefit is
 2 appropriate, the board shall also determine whether forfeiture of
 3 all or a portion of the benefits to which a surviving spouse,
 4 dependent, or beneficiary of the member would otherwise be
 5 entitled under this article is appropriate.

6 (k) If the board determines under subsection (e) that a partial
 7 forfeiture of the member's retirement benefit is warranted, the
 8 board shall calculate the member's retirement benefit as if the
 9 member had retired or withdrawn from the fund on the date that
 10 the member's misconduct first occurred.

11 (l) If the calculation of the member's retirement benefit under
 12 subsection (k) would result in an excessive retirement benefit or an
 13 excessive forfeiture, given the nature and extent of the member's
 14 misconduct, the board may select a date that is reasonably
 15 calculated to impose a forfeiture that reflects both the nature and
 16 extent of:

17 (1) the member's misconduct; and

18 (2) the member's honorable service.

19 (m) A member for whom the board has determined that
 20 forfeiture of all or a portion of the member's retirement benefit is
 21 appropriate may request that the board reconsider its
 22 determination by filing a written request with the board not later
 23 than fifteen (15) days after the date the board issues its
 24 determination. The written request must state concisely the reasons
 25 that the member believes that the forfeiture is erroneous. After the
 26 board receives the written request, the board shall set the matter
 27 for a hearing. At the hearing, the member is entitled to appropriate
 28 due process protection consistent with IC 4-21.5, including the right
 29 to be represented, at the member's expense, by counsel, the right
 30 to call and examine witnesses, the right to introduce exhibits, and
 31 the right to cross-examine opposing witnesses. The board shall rule
 32 on the request for reconsideration not later than thirty (30) days
 33 after the date of the hearing. The board shall issue its ruling in
 34 writing and may:

35 (1) affirm its determination that the forfeiture is appropriate;

36 (2) modify its determination by reducing or increasing the
 37 amount of the forfeiture; or

38 (3) vacate its determination that forfeiture is appropriate.

39 (n) If a prosecuting attorney undertakes the prosecution of or
 40 obtains a criminal conviction against an individual whom the
 41 prosecuting attorney knows, or has reason to believe, is a member
 42 of the fund, the prosecuting attorney shall:

(1) notify the board in writing of the prosecution or conviction; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(o) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a member of the public employees' retirement fund not excluded from this section by subsection (a), the inspector general shall:

(1) deliver a copy of the report to the board; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(p) The board's evidence relating to an investigation under subsection (e) is confidential until the earlier of:

(1) the time the member is notified of the board's hearing under subsection (e); or

(2) the time the member elects to have the records made public.

(q) The board's final determination under this section is available for inspection and copying under IC 5-14-3."

Page 6, after line 42, begin a new line block indented and insert:

"(12) Records containing information about whether:

(A) the misconduct of a public pension fund member or participant constitutes a breach of the condition that the

fund member's or participant's service be honorable; and

(B) forfeiture of all or a portion of the fund member's or participant's retirement benefit, allowance, or pension is

appropriate;

until the fund member or participant is notified of a public

hearing on the matter, or the fund member or participant

elects to have the records made public. A final determination

by the administrator of the public pension fund is available

for inspection and copying."

Page 8, line 13, strike "information concerning".

Page 8, line 13, reset in italic "the factual basis for".

Page 8, line 14, strike "actions".

Page 8, line 14, reset in italic "action".

Page 8, line 15, strike "disciplined".

Page 8, line 15, reset in italic "suspended,".

Page 8, line 16, reset in italic "demoted,".

Page 10, delete lines 33 through 41.

Page 11, line 18, delete "beneficiary commits misconduct while in the" and insert **"beneficiary:**

(1) is charged with a criminal offense that is:

(A) a felony related to the employee beneficiary's service as a public officer or public employee; or

(B) a misdemeanor involving an act that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business; or

(2) is the subject of an inspector general's report certified to:

(A) the attorney general under IC 4-2-7-6; or

(B) a prosecuting attorney under IC 4-2-7-7;".

Page 11, line 19, delete "active service of the department,".

Page 11, line 19, begin a new line blocked left beginning with "the department shall".

Page 11, line 19, delete "conduct a".

Page 11, line 20, delete "hearing" and insert **"take the actions described in subsection (c).**

(c) When the department receives the charges or a certified report under subsection (b), the department may begin an investigation. If, after conducting an investigation, the department decides to conduct further proceedings".

Page 11, line 21, delete "misconduct" and insert **"employee beneficiary's conduct".**

Page 11, line 24, delete "appropriate." and insert **"appropriate; the department shall schedule a public hearing on the matter not later than sixty (60) days after the criminal prosecution is completed. The department shall notify the employee beneficiary not later than five (5) days after the public hearing is scheduled.**

(d) If a public hearing is scheduled under subsection (c), the employee beneficiary may examine and make copies of all evidence in the department's possession relating to the possible forfeiture of all or a portion of the employee beneficiary's monthly pension amount.

(e) At the public hearing under subsection (c), the employee beneficiary is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the employee beneficiary's expense, by counsel.

(2) The right to call and examine witnesses.

(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses.".

Page 11, line 25, delete "(c)" and insert **"(f)".**

1 Page 11, line 27, delete "(b):" and insert "(c):".

2 Page 12, line 10, delete "(d) The" and insert "(g) After the hearing,
3 the department shall state its findings of fact. If the department,
4 based on clear and convincing evidence, finds that forfeiture of all
5 or a portion of the employee beneficiary's monthly pension amount
6 is appropriate, the".

7 Page 12, line 10, after "a" insert "written".

8 Page 12, line 10, after "determination" insert "that includes the
9 department's findings of fact".

10 Page 12, line 11, after "the" insert "public".

11 Page 12, line 11, delete "(b)" and insert "(c)".

12 Page 12, line 13, delete "(e)" and insert "(h)".

13 Page 12, line 13, delete "(b)" and insert "(c)".

14 Page 12, line 19, delete "(f)" and insert "(i)".

15 Page 12, line 19, delete "(b)" and insert "(c)".

16 Page 12, line 26, delete "(g)" and insert "(j)".

17 Page 12, line 27, delete "(f)" and insert "(i)".

18 Page 12, between lines 33 and 34, begin a new paragraph and insert:

19 **"(k) An employee beneficiary for whom the department has**
20 **determined that forfeiture of all or a portion of the employee**
21 **beneficiary's monthly pension amount is appropriate may request**
22 **that the department reconsider its determination by filing a written**
23 **request with the department not later than fifteen (15) days after**
24 **the date the department issues its determination. The written**
25 **request must state concisely the reasons that the employee**
26 **beneficiary believes that the forfeiture is erroneous. After the**
27 **department receives the written request, the department shall set**
28 **the matter for a hearing. At the hearing, the employee beneficiary**
29 **is entitled to appropriate due process protection consistent with**
30 **IC 4-21.5, including the right to be represented, at the employee**
31 **beneficiary's expense, by counsel, the right to call and examine**
32 **witnesses, the right to introduce exhibits, and the right to**
33 **cross-examine opposing witnesses. The department shall rule on the**
34 **request for reconsideration not later than thirty (30) days after the**
35 **date of the hearing. The department may:**

36 **(1) affirm its determination that the forfeiture is appropriate;**

37 **(2) modify its determination by reducing or increasing the**
38 **amount of the forfeiture; or**

39 **(3) vacate its determination that forfeiture is appropriate."**

40 Page 12, line 34, delete "(h)" and insert "(l)".

41 Page 12, after line 42, begin a new paragraph and insert:

42 **"(m) If the inspector general certifies a report to the attorney**

1 general under IC 4-2-7-6 or to a prosecuting attorney under
 2 IC 4-2-7-7, concerning an individual whom the inspector general
 3 knows, or has reason to believe, is an employee beneficiary of the
 4 pension trust, the inspector general shall:

- 5 (1) deliver a copy of the report to the department; and
- 6 (2) provide any information requested by the department to
 7 enable the department to make the determination required by
 8 this section.

9 (n) An employee beneficiary for whom forfeiture of all of the
 10 employee beneficiary's monthly pension benefit is determined
 11 appropriate is entitled to the return of the employee beneficiary's
 12 contributions to the trust fund with interest."

13 Page 13, delete lines 1 through 16, begin a new paragraph and insert:

14 "(o) The department's evidence relating to an investigation
 15 under subsection (c) is confidential until the earlier of:

- 16 (1) the time the employee beneficiary is notified of the
 17 department's public hearing under subsection (c); or
- 18 (2) the time the employee beneficiary elects to have the
 19 records made public."

20 Page 13, line 17, delete "IC 5-14-3-4(b)(21).", begin a new
 21 paragraph and insert:

22 "(p)".

23 Page 13, delete lines 19 through 42.

24 Delete pages 14 through 31.

25 Page 32, delete lines 1 through 11.

26 Page 32, line 13, delete "IC 5-10.2-4-11," and insert "**IC**
 27 **5-10.3-8-14, and**".

28 Page 32, line 13, delete "IC 33-38-6-28, IC 33-39-7-26,".

29 Page 32, delete line 14.

30 Page 32, line 15, delete IC 36-8-10-12.3,".

31 Page 32, line 15, after "IC 5-14-3-4" insert ",".

- 1 Page 32, line 15, delete "and".
- 2 Page 32, line 16, delete "IC 36-8-8-12.7, both".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 423 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 4.

Senator Harrison, Chairperson